



Office of the Attorney General
State of Texas

September 28, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Cynthia N. Milne
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Texas Department of Criminal Justice
Institutional Division
P. O. Box 99
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OR92-545

Dear Ms. Milne:

The Texas Department of Criminal Justice (TDCJ) asks whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 16678.

TDCJ has received a request from a TDCJ inmate for disclosure of the presentence investigation report relating to his sentencing. TDCJ claims that this information is excepted from required public disclosure by Open Records Act sections 3(a)(1), 3(a)(7), 3(a)(8), and 3(a)(11). TDCJ also claims that the presentence investigation report is a judicial record and thus is excepted from required public disclosure under the Open Records Act.

Pursuant to the Texas Code of Criminal Procedure, a convicting court in a felony case shall direct a probation officer to prepare a presentencing report to advise the court of the circumstances of the offense for which the defendant was charged, the criminal and social history of the defendant, and any other information requested by the court. Code Crim. Proc. art. 42.12, § 9(a). The probation officer is also required to submit a copy of the report to the institution to which the defendant is incarcerated. *Id.* § 9(g).

Open Records Act section 3(a) provides that all information in the possession of governmental bodies is public information subject to the enumerated exceptions of the act. Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." We assume, without deciding, that the presentence report in the

possession of TDCJ is no longer a record of the judiciary; however, we conclude it is excepted from required public disclosure by section 3(a)(1).

Code of Criminal Procedure article 42.12, section 9, states in relevant part:

(c) The court may not inspect a [presentence] report and the contents of the report may not be disclosed to any person unless:

(1) the defendant pleads guilty or nolo contendere or is convicted of the offense; or

(2) the defendant, in writing, authorizes the judge to inspect the report.

(d) Before sentencing a defendant, the court shall permit the defendant or his counsel to read the presentence report.

(e) The court shall allow the defendant or his attorney to comment on the report and, with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the report.

(f) The court shall allow the attorney representing the state access to any information made available to the defendant under this section.

(g) The probation officer making a report under this section shall send a copy of the report to an institution to which the defendant is committed.

....

(j) ... *The [presentence] report and all information obtained in connection with the presentence investigation are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), and (g) of this section and as directed by the*

court for the effective supervision of the defendant.
[Emphasis added.]

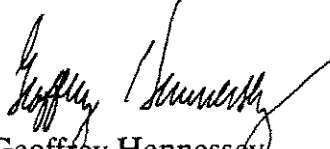
Section 9(j) deems the presentence report confidential. The exceptions to this confidentiality requirement - sections 9(d) through 9(g) - are not applicable in this situation. Sections 9(d) and 9(e) grant the defendant or his attorney the right to examine the presentence report prior to sentencing; the statutes do not grant the defendant the right to examine the report thereafter.

Section 9(j) also demonstrates that the convicting court remains in control of the distribution of the report even after the sentencing. After sentencing, the report may be released only by the judge "for the effective supervision of the defendant." *Id.* § 9(j). The report is transferred to TDCJ only for purposes of supervising the defendant. *Id.* § 9(a). Distribution of the report is strictly limited by the statute; allowing further distribution by TDCJ would undermine these strict limits and the court's continuing control over access to the report.

We conclude that the presentence report relating to the sentencing of an incarcerated prisoner is deemed confidential pursuant to Code of Criminal Procedure article 42.12, section 9(j). Therefore, a presentence report is excepted from required public disclosure pursuant to Open Records Act section 3(a)(1).

Because the Code of Criminal Procedure resolves your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling please refer to OR92-545.

Very truly yours,


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Opinion Committee

GH/lmm

Ref.: ID# 16678
ID# 16679

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